That case deals with a different situation, and, to my mind, has no application to the present case. Here, the learned president amended the charge at the close of the prosecution case after exercising his powers under section 158 of the Criminal Procedure Code. Since the charge was one for the prosecution of which previous sanction was necessary, the prosecuting officer applied for an adjournment for sanction to be produced. Sanction was produced at the resumed hearing. Mr. Ajaib Singh, senior federal counsel appearing for the respondent, argued that by reason of section 161 of the Criminal Procedure Code, the production of a sanction was in compliance with that section. Section 161 reads —

"If the offence stated in the new or altered or added charge is one for the prosecution of which previous sanction is necessary the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded."

In my opinion, the learned president quite properly exercised his power under section 158 of the Criminal Procedure Code when he added a new charge. The added charge became one which the learned president was competent to hear on production of the sanction.

The remaining ground which the court has to determine is the question of corroboration.

"... there is no rule of law in this country that in sexual offences, the evidence of the complainant must be corroborated; nevertheless, as a matter of common sense, it will be unsafe to convict unless either the evidence of the complainant is unusually convincing or there is some corroboration of the complainant's story." See *Public Prosecutor* v. *Mardai*.(2)

Strictly, the present case is not a sexual offence as such. Nevertheless it is an established practice that the court will look for some corroboration particularly when the complainant is a young girl. Corroboration may not be necessary where the court is satisfied beyond any reasonable doubt that the complainant is telling the truth or where the nature of her evidence is such that the court is satisfied it is safe to convict.

In the instant case, the evidence of the caretaker of Kim Wah Hotel (P.W. 4), denied that the complainant stayed at his hotel. Though there was some evidence to show that the complainant visited the hotel on two occasions, there was nevertheless no evidence adduced by the prosecution, apart from the complainant's, to establish when these two visits were actually made.

This court has also directed its mind to the police report made by the complainant. The statement in her report does not however substantiate the evidence given by her in the court below. If her oral testimony had been substantiated such report may by reason of section 157 of the Evidence Ordinance be held to be sufficient corroboration. In this case the report was lodged three days after she returned from Malacca. There was no mention of Kim Wah Hotel. She referred in her report to a hotel near Federal. It is not known whether the hotel referred to was in fact Kim Wah Hotel. Further there is nothing on record to show exactly where Kim Wah Hotel is situated.

In the circumstances of this particular case it is evident that there was complete absence of corroboration. There is also nowhere shown that the learned president had at any time directed his mind as to the question of corroboration. The court is unable to say what decision the learned president may have arrived at if he had so directed. As such I am of the opinion that the conviction on the second charge cannot stand.

For the reasons which I have given above, I am allowing this appeal. I therefore quash the conviction and sentence on both charges and substitute an order for acquittal. The fine, if paid, shall be refunded.

Appeal allowed.

SATHIADAS v. PUBLIC PROSECUTOR

[A.Cr.J. (Raja Azlan Shah J.) July 31, 1970]

[Kuala Lumpur — Criminal Appeal No. 24 of 1970]

Penal Code, s. 408 — Criminal breach of trust — Ingredients of offence — Failure of accused to account for monies entrusted to him — Sentence.

Evidence — Retracted confession — Admissibility — Evidentiary value of.

This was an appeal against the conviction of the appellant on three charges of criminal breach of trust. It was alleged that the appellant who was a traffic clerk employed by the Malaysia-Singapore Airways Ltd. received monies from consignees of cargoes but had not made any relevant entries in the sales returns and had not submitted the monies to the Kuala Lumpur head office of the company. At the trial a statement made by the appellant was admitted in evidence. This statement which was a confession was retracted by the appellant in his evidence.

Held, dismissing the appeal: (1) the statement made by the appellant was a voluntary one and although it was retracted it was open to the learned president if he held that it was voluntary and true to accept it;

(2) although the mere failure of the appellant to account for the monies entrusted to him on the dates specified in the three charges might not be a foundation for his conviction in all cases but where he was unable to account and render an explanation for his failure an inference of misappropriation with dishonest intent might readily be made;

(3) where the prosecution had proved that the appellant was entrusted with money for a specific purpose and that he has failed to account for it or has done something which is clearly indicative of his dishonest intention, the charge of dishonest misappropriation must be held to have been established unless the appellant shows the existence of some fact or circumstance within his own knowledge which is consistent with his innocence.

Observations in the nature of principles of general application in cases of criminal breach of trust.

Cases referred to:-

(1) *Yap Sow Keong and Anor.* v. *Public Prosecutor* [1947] M.L.J. 90.

(2) *Sinaraju* v. *Public Prosecutor* [1961] M.L.J. 33.

MAGISTRATE'S CRIMINAL APPEAL.

R. Ponnudurai for the appellant.

Ajaib Singh (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah J.: The appellant was convicted of criminal breach of trust under section 408 of the

Penal Code. Three charges were preferred against him. The first charge relates to a period between 5th April 1966 and 8th April 1966 of cash amounting to $450.10; the second charge is in respect of a period between 17th May 1966 and 26th May 1966 of a sum of $291.00 and the third charge relates to a period between 2nd June 1966 and 3rd June 1966 of a sum of $515.10. He was convicted on all three charges and sentenced to 12 months' imprisonment, the sentences to run concurrently. This is an appeal against both conviction and sentence.

The appellant was the traffic clerk employed by the Malaysia-Singapore Airways. He was at the relevant time posted to the Customs Warehouse, Railways Goods Shed, Kuala Lumpur. His duties were to receive inward parcels from the airport and to contact the consignees to take delivery of the goods and in due course to receive payments in respect of air-freight charges. It was then his duty to prepare the daily sales returns *i.e.*, red returns together with all the payments. He was required to submit them to the Kuala Lumpur head office at Campbell Road. The learned president found as a fact that on all three separate occasions mentioned in the charges the appellant received the monies from the consignees but he did not make any relevant entries in the sales returns and up to this day he had not remitted the monies to the Kuala Lumpur head office.

I must now inquire whether such findings are justified.

With regard to the first charge the evidence shows that the goods did arrive and the consignees had taken delivery and paid for the air-freight charges. That is borne by the evidence of Shanmugam (P.W. 9) the despatch clerk of the East Asiatic Company, the consignees of the goods. He testified that he took delivery of the goods from the appellant and paid the money to him and that he obtained a signed receipt from the appellant, which was produced as Ex. P10. His evidence was not seriously challenged. The learned president saw no reason to disbelieve him.

With regard to the second charge the evidence also shows that Societa Commissaria, Kuala Lumpur, the consignees, had taken delivery of the goods and had paid $291.00 representing air-freight charges. Sabtu bin Haji Othman (P.W. 14) the clearance clerk of the consignees testified that he took delivery and paid the appellant the sum of $291.00 and obtained the receipt, which was produced as Exh. P.11. His evidence was not shaken.

The third charge relates to a consignment of sports shoes ordered by Messrs. Nahar & Co., Kuala Lumpur. They had received the goods for which they had paid $515.10 representing air-freight charges, but Muniandy (P.W. 16), the salesman, who took delivery could not remember to whom he had paid the money.

The prosecution further relies on the appellant's alleged statement which is one of the grounds of appeal. It was said that the statement was taken after one hour of grilling and that was sufficient to make the "appearance" that the statement was not voluntary. It was further suggested that the procedure adopted by the learned president was not in strict compliance with normal procedure in that the appellant was never given an opportunity to rebut the statement.

In my judgment two matters require consideration. First, was the statement voluntary and secondly the probative value of the statement. Before ruling on the admissibility of the statement the learned president heard 4 witnesses who were connected with the taking of the statement. He heard the evidence of Enche Suleiman bin Haji Musa (P.W. 1) the accountant of Malaysia-Singapore Airlines, who discovered the discrepancy in the sales returns. Enche Suleiman said that no inducement, threat or promise was ever held out to the appellant before signing the statement. He admitted in cross-examination that it took him nearly an hour to go through the various documents with the appellant and the staff but the time taken to write the statement was between 5 to 10 minutes. He said this in evidence:

"Then I asked the cargo staff concerned i.e., Enche Sathiadas whether he had collected the amounts involved to which he replied that he had collected the money to pay his personal debts. I then asked him whether he would like to put that in the form of a letter to the company as to the verbal discussion. Enche Sathiadas mentioned that he will settle the amount he had taken within November 1966; to this he wrote a note (Exh. P7) on the company's memo."

The statement is to this effect:

"From: J.J. Sathiadas,
Air Cargo Customs Warehouse,
Kuala Lumpur.

To: The Area Accountant,
M.A.L. Kuala Lumpur.

c.c. Cargo Officer,
M.A.L. Airport, K.L.

Subject: *Re:* $1,254.40 Date: 29.10.1966.

The above amount was taken by me to settle my debts. I beg to advise you that this will be settled to you within November 1966.

160-373375 — $291.00 dated 17.5.1966
160-367582 — $449.30 dated 5.4.1966
057-1946620 — $514.10 dated 2.6.1966

Sd. Sathiadas."

The learned president held the view that Enche Suleiman was not shaken by the lengthy and inconsistent cross-examination. He accepted his evidence. The next witness he examined was Mazlan bin Haji Daud (P.W. 8), the other traffic clerk whom he regarded as an unreliable witness. He was of little help to either the prosecution or the defence. The learned president's impression of the witness was that he was reluctant to reveal anything that would be of help to either side. He rejected his evidence in toto. Palaniasamy (P.W. 10), the cargo hand also testified that he had heard Enche Suleiman telling the appellant to sign something but beyond that nothing turned on this witness's evidence. The learned president also heard the evidence of Joseph Low Chong Teck (P.W. 17) who was at that time present in the warehouse. He was the cargo officer employed by the Malaysia-Singapore Airways and based at Subang Airport. The learned president treated him as a reluctant witness. He took the view that whatever was said by this witness in connection

with the alleged statement was told to him by the appellant and therefore he attached no weight to P.W. 17's evidence.

At that stage the appellant did not elect to go into the witness box as he might have done because at that stage it would have been open to him and his then counsel would have advised him to go into the witness box to tell the court his version of the circumstances under which the alleged statement was recorded. But he was not obliged to do that. He was perfectly entitled to say nothing. As he did not say anything at that stage the learned president saw no reason for refusing to admit that statement on the ground that it was not voluntary. Since the statement had been admitted the accused had in the course of his evidence in the witness box said that he was forced to make it. The learned president did not think that that would reasonably be true because it would have involved disbelieving Enche Suleiman and believing the appellant. He saw no reason to disbelieve Enche Suleiman.

I am satisfied from the perusal of the evidence that the statement was voluntary.

The appellant's present counsel then took the stand that the appellant was not given the opportunity to rebut the statement and he therefore quite properly submitted that such omission is a good ground to reject the statement as evidence.

I have anxiously perused the record and it would appear that the appellant did not give evidence to rebut the statement. The learned president after hearing submissions from both sides admitted the statement. There was nothing on record to suggest that there was a request by counsel to put the appellant in the witness-box. Had there been a request by counsel I have every reason to believe that the learned president would not have disallowed him to take the stand. Since the record is silent on the point I fail to see any merit in counsel's submission.

It was further said that the alleged confession having been retracted, the learned president erred in not considering whether there was sufficient corroboration before accepting the same. The submission is no doubt based on Indian authorities. There is a manifest distinction between our law and the Indian authorities and that has been set at rest by the judgment in the case of *Yap Sow Keong* v. *Public Prosecutor*[1] where Willan C.J. observed that an accused person can be convicted on his own confession, even when retracted, if the court is satisfied of its truth. Our courts do not agree with the Indian case which laid down that before a person can be convicted on his retracted confession, there must be corroborative evidence to support it. The learned president in the present case has given his reasons in a clear, careful and comprehensive judgment as to the evidentiary value of the retracted confession. Once the statement was admitted he treated it as a retracted confession and after due caution he accepted it as true. In my view he rightly followed the principles set out by Thomson C.J. (as he then was) in *Sinaraju* v. *Public Prosecutor*[2] That was a murder case tried by a jury and the only evidence tendered against the accused at the trial was a retracted confession. Thomson C.J. in delivering the judgment of the court said that the jury must consider the confessions with care and unless they were satisfied in the first place that the confessions were voluntary and in the second place they were true, they should not believe the confessions. Once the correct principles are applied, as they have been in this case, the matter possessed the sanctity of a pure finding of fact. In my view there was ample evidence to sustain the finding of the learned president if he believed the witnesses who gave it, as apparently he did, having seen and heard them.

The gist of the offence of criminal breach of trust is entrustment and dishonest misappropriation or conversion to own use. Once the prosecution have succeeded in proving the receipt of the money for a particular purpose the case of entrustment is made out. Dishonest misappropriation or conversion to own use involves wrongful gain to the appellant or wrongful loss to his employers for the period of the retention of the money. That must depend on the facts and circumstances of each case. Criminal breach of trust is not an offence which counts as one of its factors, the loss that is the consequence of the act, it is the act itself, which in law, amounts to an offence. The offence is complete when there is dishonest misappropriation or conversion to one's own use, or when there is dishonest user in violation of a direction, express or implied, relating to the mode in which the trust is to be discharged.

It may be observed that mere retention of money would not necessarily raise a presumption of dishonest intention but it is a step in that direction. The fact that money entrusted to be used for a particular purpose, was not used for such purpose; that there was retention for a sufficiently long time would, together with other facts and circumstances justify the inference that the appellant had dishonestly misappropriated or converted the money to his own use. There was the intention in the appellant to deprive his employers of their monies, and the appellant misappropriated the monies for a time, intending to make it good eventually when any further retention became impossible.

In the light of the above observations which are in the nature of principles of general application in cases of criminal breach of trust, and after giving careful consideration to the facts and circumstances of the case before this court, I have reached the conclusion that the result of the evidence on record is that what was done or omitted by the appellant was moved by a guilty mind. On two occasions he had received the monies but had failed to carry out the trusts reposed in him. On the third occasion there exists strong circumstantial evidence of guilt.

It remains now to consider the other ground of appeal. It was submitted that the learned president erred in drawing the inference of guilt from the fact that the monies had not reached the Kuala Lumpur head office on the dates specified in the three charges. Counsel argued that the monies might have been handed on subsequent dates which accordingly would have been recorded in subsequent returns and which have

not been examined by Enche Suleiman. The learned president held the view that this fact by itself did not point to guilt but was a factor to be considered in establishing guilt.

That, in my opinion, is the right approach; the learned president is not guilty of any error of principle and I certainly do not take the view that his judgment reveals any misapprehension of the effect of the evidence which was called before him.

It is settled law that mere failure of the appellant to account for the monies entrusted to him on the dates specified in the three charges might not be a foundation of his conviction in all cases but where he was unable to account and render an explanation for his failure, which was not true, an inference of misappropriation with dishonest intent might readily be made. In my opinion if there was such subsequent payments then the Singapore office of Malaysia-Singapore Airways which did the processing of all daily returns would have discovered the same. The learned president found as a fact that the Singapore office did not find that the monies were subsequently paid. The other aspect of the matter is that since this is within the knowledge of the appellant, whose duty it was to prepare these returns, it was up to him to show the existence of such fact which is consistent with his innocence. He has failed to do that. For the purpose of establishing dishonest intention, it is not the law in this country, any more than it is the law in India, that the prosecution should go further and also prove the actual mode of misappropriation or conversion. Once the prosecution have proved that the appellant was entrusted with money for a specific purpose and that he has failed to account for it or has done something which is clearly indicative of his dishonest intention, the charge of dishonest misappropriation must be held to have been established unless the appellant shows the existence of some fact or circumstance within his own knowledge which is consistent with his own innocence. It must be stated here that for the purpose of establishing dishonest intention the prosecution is not required to eliminate all possible defences and circumstances which might exonerate the appellant, or that apart from proving the appellant's possession of the money and his inability to account for it, it has also to prove the exact manner of his disposal of the money in a manner contrary to the purpose for which he received it.

The offence of criminal breach of trust has so polarized the country that we can no longer accept it with the same passivity we have displayed towards such evil before. Unless the offence is met with substantial sentence adequate deterrence will not be achieved. As I have said before and I say it again, the sentence must reflect the gravity of the offence. The present case is one of extreme premeditation. The appellant whose duty it was to account for all monies entrusted to him, had failed to discharge his responsibilities. In my view the sentence of 12 months is not adequate. However, I would not interfere with the sentence. My observation is directed to would-be offenders and to those whose duty it would be to hear similiar cases.

The appeal is dismissed.

Appeal dismissed.

WILLIAM TAN CHENG ENG v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Tan Ah Tah and Chua JJ.) August 18, 1970]

[Singapore — Criminal Appeal No. Y. 17 of 1969]

Penal Code, s. 300 — Murder — Murder by car — Knowledge that act is so imminently dangerous that it must in all probability cause death — Failure of trial judge to direct jury on knowledge of consequences of act — Conviction set aside.

The appellant had been charged with murder. It was alleged that while driving a car along Bedok Road in Singapore he caused the death of an approaching motor cyclist in such circumstances that he knew his manner of driving was so imminently dangerous that it must in all probability cause death or such bodily injury as was likely to cause death. The trial judge in his summing up to the jury did not direct the jury on the vital ingredient which the prosecution had to prove, namely that the appellant knew the consequences of his act.

Held: (1) it is not sufficient to amount to murder under section 300 for an act to be so imminently dangerous that it must in all probability cause death. Such an act becomes murder only if the person who commits the act and death results, knew when committing the act, that it was so imminently dangerous that it would in all probability cause death or such bodily injury as was likely to cause death;

(2) the learned trial judge had omitted in his summing up the most vital ingredient which the prosecution had to prove, namely that the appellant knew the consequences of his act;

(3) on the evidence no reasonable jury could have found beyond a reasonable doubt that the appellant had at the material time knowledge that he was driving in a manner that was imminently dangerous that it must in all probability cause death or such bodily injury as was likely to cause death;

(4) there was therefore no sufficient evidence on which a reasonable jury could have found the appellant guilty of murder and the conviction for murder must be set aside and a conviction under section 26 of the Road Traffic Ordinance substituted for it.

COURT OF CRIMINAL APPEAL.

David Marshall (*N. Ganesan* with him) for the appellant.

Francis T. Seow (Solicitor-General) (*Tommy Neo* (Deputy Public Prosecutor) with him) for the respondent.

Wee Chong Jin C.J.: At the conclusion of the hearing of this appeal we set aside the conviction of murder and substituted a conviction under section 26 of the Road Traffic Ordinance. During the course of a short oral judgment we intimated we would give our reasons in writing at a later date.

We now proceed to do so. The appellant was charged with the offence of murder in that he, "on or about the 8th day of December 1968, at about 4.45 p.m. at Bedok Road near Jalan Bilal, Singapore, committed murder by causing the death of one Ahmad bin